

# SUPER LAW GROUP, LLC

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August 21, 2013

*Via U.S. First Class Mail*

H. Curtis Spalding  
EPA Region 1 Administrator  
Environmental Protection Agency  
5 Post Office Square - Suite 100  
Boston, MA 02109

**RECEIVED**

**AUG 27 2013**

OFFICE OF THE REGIONAL ADMINISTRATOR

Re: Soundkeeper, Inc., Connecticut Fund for the Environment, Inc. and Conservation Law Foundation, Inc., v. Waterbury Auto Salvage, Inc.,  
United States District Court for the District of Connecticut,  
Case No. 3:12-cv-00842-JBA

Dear Administrator Spalding,

Pursuant to 33 U.S.C. § 1365(c)(3) of the Clean Water Act (CWA), lead counsel for Plaintiffs Soundkeeper, Inc., Connecticut Fund for the Environment, Inc. and Conservation Law Foundation, Inc., provides the attached proposed consent decree between Plaintiffs and Waterbury Auto Salvage, Inc., ("Waterbury"), resolving alleged violations of the CWA and the General Permit for the Discharge of Stormwater Associated with Industrial Activity, issued by the Connecticut Department of Energy and Environmental Protection. The parties intend to file a joint motion for entry of consent judgment with the United States District Court for the District of Connecticut. This motion will be brought before the Court following the 45-day period for U.S. government review of the consent decree required by 40 C.F.R. §135.5(b).

The consent decree provides that Waterbury will make a supplemental environmental project payment of \$7,500 to Naugatuck River Revival Group ("NRRG"), for use on projects relating to the reduction, mitigation and/or remediation of the effects of stormwater pollution of the or environmental restoration of or other benefit to the Naugatuck River, Housatonic River and/or Long Island Sound watersheds. We have attached written confirmation from NRRG that the organization (1) has read the proposed settlement agreement; (2) will spend any monies it receives under the settlement agreement for the purposes specified in the agreement; (3) is a 501(c)(3) tax-exempt organization; and (4) will not use any money received under the settlement agreement for political lobbying activities.

H. Curtis Spalding  
August 21, 2013  
Page 2

At the request of the Connecticut Department of Energy and Environmental Protection ("DEEP"), we have also enclosed a copy of DEEP's comments on a prior version of the decree, along with a response showing changes made as a result of those comments, and an August 16, 2013, letter from defendant's counsel regarding DEEP's comments.

By submitting this consent decree as requested, counsel for Plaintiffs asks the United States to promptly review the agreement and, if it does not object to dismissal of this action, to so notify the Court.

If you have any questions or concerns regarding this matter, please contact me.

Very truly yours,

Handwritten signature of Reed W. Super in black ink, with the initials "AH" written to the right of the signature.

Reed W. Super  
Super Law Group, LLC  
131 Varick Street, Suite 1033  
New York, NY 10013  
(212) 242-2273  
reed@superlawgroup.com

Attorney for Soundkeeper Inc.,  
Connecticut Fund for the  
Environment, Inc., and Conservation  
Law Foundation, Inc.

Encls.

cc: (via Certified Mail Return Receipt)

Gina McCarthy, Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Citizen Suit Coordinator  
United States Department of Justice  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, D.C. 20044-7415

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

SOUNDKEEPER, INC., CONNECTICUT FUND FOR THE ENVIRONMENT, INC., and CONSERVATION LAW FOUNDATION, INC.,	X	
	:	
	:	
	:	
Plaintiffs,	:	Case No. 3:12-cv-00842-JBA
	:	
v.	:	<b>[PROPOSED] CONSENT</b>
	:	<b>DECREE</b>
WATERBURY AUTO SALVAGE INC.,	:	
	:	
Defendant.	:	
	X	

WHEREAS, Plaintiffs Soundkeeper, Inc. (“Soundkeeper”), Connecticut Fund for the Environment, Inc. (“CFE”) and Conservation Law Foundation, Inc. (“CLF”) (collectively, “Plaintiffs”) filed this action on June 6, 2012, against Defendant Waterbury Auto Salvage, Inc. (“Waterbury”), alleging violations of 33 U.S.C. §§ 1311(a) and 1342 of the Clean Water Act (“CWA”) and seeking declaratory and injunctive relief, civil penalties, and reasonable attorneys’ fees and costs;

WHEREAS, Soundkeeper is a Connecticut based nonprofit environmental organization with members who use and enjoy Long Island Sound, for both commercial and recreational purposes;

WHEREAS, CFE is a Connecticut based nonprofit environmental organization with members who use and enjoy Connecticut’s lakes, rivers and Long Island Sound;

WHEREAS, CLF is a regional, nonprofit environmental organization with members who use and enjoy the Long Island Sound watershed for recreational, aesthetic and scientific purposes;

WHEREAS, Waterbury owns and operates an automobile salvage facility, which operations are located at 55 Eagle Street, Waterbury, CT 06708 (the “Facility”);

WHEREAS, the Facility has a total of one employee other than the Facility owners, covers roughly one acre of land and has gross revenues ranging from \$330,000 to \$550,000 for the last two years;

WHEREAS, Soundkeeper, CFE and CLF have alleged that the Facility discharges stormwater associated with industrial activity into the waters of the United States, including the Naugatuck River, which discharges to the Housatonic River and ultimately to Long Island Sound;

WHEREAS, Waterbury operates under a primary Standard Industrial Classification (“SIC”) Code of 5015 at the Facility, which classification is subject to Connecticut’s General Permit for the Discharge of Stormwater Associated with Industrial Activity (the “General Permit”);

WHEREAS, Waterbury retained Apex Environmental, Inc. (“Apex”) to evaluate the applicability of the General Permit to the Facility and, on March 4, 2004, Apex sent Waterbury a letter providing Apex’s opinion that the General Permit is not applicable to the Facility because no point sources were observed at the Facility;

WHEREAS, Plaintiffs disagree with the opinion in the Apex letter;

WHEREAS, Plaintiffs have alleged, in their June 6, 2012 complaint (the “Complaint”) and in their notice of intent to sue (the “Notice Letter”) dated April 6, 2012, that Waterbury has violated and continues to violate 33 U.S.C. §§ 1311(a) and 1342 by, inter alia, discharging polluted stormwater associated with industrial activity without coverage under the General Permit and by failing to comply with the conditions of the General Permit. Among other things, the General Permit requires development and implementation of a Stormwater Pollution Prevention Plan (“SWPPP”), stormwater monitoring, inspections, recordkeeping and reporting.

WHEREAS, following receipt of the Notice Letter, Waterbury submitted a registration form to the Connecticut Department of Energy and Environmental Protection (“DEEP”) seeking coverage under the General Permit; however, DEEP notified Waterbury that its registration form was incomplete, which deficiency was corrected and the registration was authorized on October 3, 2012;

WHEREAS, Plaintiffs and Waterbury (collectively, “the Parties” or individually “Party”) agree that it is in their mutual interest to resolve this matter without the taking of evidence or findings of fact or law, and the Parties would like to avoid prolonged and costly litigation;

WHEREAS, this Decree shall be submitted to the United States Department of Justice and the United States Environmental Protection Agency (“EPA”) for the 45 day statutory review period, pursuant to 33 U.S.C. § 1365(c);

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Waterbury of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

**IT IS HEREBY STIPULATED BETWEEN THE PARTIES AND ORDERED, ADJUDGED AND DECREED BY THE COURT as follows:**

**I. DEFINED TERMS**

The defined terms set forth in the foregoing recitals are hereby incorporated into the body of this Decree and are made a part hereof. In addition, the following terms used in this Decree have the meaning set forth below:

1. Effective Date: the day the Court enters this Decree after the expiration of the forty-five (45) day review period required by 33 U.S.C. § 1365(c)(3).
2. Facility: the auto salvage facility located at 55 Eagle Street, Waterbury, CT 06708, owned and operated by Waterbury.
3. Term of this Decree: the period beginning on the Effective Date and ending upon receipt of the final Supplemental Environmental Project (“SEP”) payment and final litigation costs payment under Section VI of this Decree.

## **II. JURISDICTION AND VENUE**

4. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). Plaintiffs have standing and have complied with the statutory notice requirements under 33 U.S.C. § 1365(a)(1), and the corresponding regulations at 40 C.F.R. § 135.2. An actual, justiciable controversy exists between Plaintiffs and Defendant. The requested relief is proper under 28 U.S.C. §§ 2201, 2202 and 33 U.S.C. § 1365(a).
5. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to this action occurred at the Waterbury Facility, and in the Naugatuck River, Housatonic River and Long Island Sound Watersheds, which are located within this judicial district.
6. For purposes of this Decree, or any action to enforce this Decree, Waterbury consents to the Court’s jurisdiction over this Decree and over Waterbury. For purposes of this Decree, Waterbury consents to venue in this judicial district.

## **III. SWPPP COMPLIANCE PROGRAM**

7. During the Term of this Decree, Waterbury shall maintain coverage under the General Permit or any reissued State of Connecticut General Permit for the Discharge of Stormwater Associated with Industrial Activity.
8. Prior to the Effective Date, Waterbury shall revise its SWPPP and associated Control Measures for the Facility, in compliance with Sections 5(b) and 5(c) of the General Permit to reflect, at minimum, all of the modifications set forth in Exhibit A, hereto. Waterbury shall maintain those Control Measures and SWPPP provisions during the Term of this Decree.
9. In the event DEEP provides comments on, or requests or directs Waterbury to modify, the SWPPP for the Facility during the Term of this Decree, Waterbury shall respond to DEEP, with a copy to Plaintiffs, within 30 days of receipt of the communication from DEEP. With respect to each issue raised by DEEP, Waterbury’s response shall: (i) indicate that the SWPPP will be modified to address the issue and shall provide a date by

which the modification shall occur, (ii) explain why Waterbury believes the modification is unnecessary, or (iii) request clarification from DEEP.

10. Waterbury will implement the SWPPP at the Facility in compliance with the terms of the General Permit, which is hereby incorporated into this Decree.

#### **IV. MONITORING PROGRAM**

11. Waterbury will sample its stormwater discharges, as identified in the SWPPP, in accordance with the requirements in Sections 5(e) and 5(g) of the General Permit. Waterbury may report this sampling as part of the stormwater monitoring required by the permit. Waterbury will send a copy of each inspection and/or sampling result to Plaintiffs at the same time Waterbury sends such result to DEEP. In the event that Waterbury is unable to collect a sample, the failure to sample shall not constitute non-compliance provided that Waterbury is in full material compliance with General Permit Section 5(e)(2)(E) (entitled "Inability to Collect a Sample").
12. Waterbury will also comply with all other inspection and monitoring requirements of the General Permit including, but not limited to, those of Sections 5(d) and 5(e).
13. Waterbury may take additional samples of its stormwater discharges. If it does so, for a period of two years from the Effective Date, Waterbury shall send a copy of each such inspection and/or sampling result to Plaintiffs within five (5) business days.
14. Waterbury shall maintain written documentation at the Facility describing all inspections and assessments required to be documented under applicable provisions of the General Permit or of this Decree. For a period of two (2) years from the Effective Date, Waterbury shall forward copies of any documentation which it is required to provide to DEEP to Plaintiffs concurrent with providing such information to DEEP.
15. Waterbury will comply with the reporting and recordkeeping requirements of Section 5(h) of the General Permit. For a period of two (2) years from the Effective Date, Waterbury shall copy Plaintiffs on all documents related to water quality or CWA compliance regarding the Facility submitted to any government agency including, but not limited to, the EPA and DEEP.

#### **V. HAZARDOUS WASTE, SOLID WASTE AND RECYCLING PROGRAM**

16. This Paragraph 16 of the Decree is included at the request of DEEP, a non-party to this action. Waterbury shall undertake and maintain throughout the Term of this Decree all procedures described below:
  - a. Waterbury has retained a qualified consultant to prepare the documents and implement or oversee the actions required by this Paragraph 16. The consultant has at least five years of substantial work experience in the environmental compliance field, including experience with the Connecticut hazardous and solid

waste management regulations. Waterbury has submitted or will submit, upon request, to the DEEP Commissioner a description of a consultant's education, experience and training that is relevant to the work required by this Paragraph 16.

- b. Waterbury's consultant has prepared the waste stream disposal flow chart attached hereto as Exhibit B to this Consent Decree based, in part, on DEEP's Waste Management Checklist for Auto Recycling Facilities (dated 4/30/10, revised 11/15/2012). Waterbury has provided a copy of Exhibit B to the DEEP Commissioner. Waterbury shall update the flow chart and any associated best management practices if any of the waste generation practices at the facility materially change. To the extent required by law, Waterbury shall maintain a copy of the current flow chart and any related records at the facility at all times for a period of at least three (3) years from the Effective Date notwithstanding the termination of this Decree.
- c. Waterbury's consultant has also conducted a comprehensive recycling review of the facility to evaluate compliance with the Connecticut recycling laws set forth in CGS Section 22a-241b(d). Prior to the Effective Date, Waterbury's consultant shall prepare a business recycling profile documenting the management of materials generated at the facility. An example of a recycling profile is attached as Exhibit C to this Decree. Waterbury shall update the business recycling profile if there is a change in the type of recyclables handled at the facility. Waterbury shall incorporate compliant recycling practices into daily operations at the facility, including but not limited to ensuring that contracts are in place for collection of all solid waste and recyclables at the facility. To the extent required by law, Waterbury shall maintain a copy of the current business recycling profile and any related records at the facility at all times for a period of at least three (3) years from the Effective Date notwithstanding the termination of this Decree. Waterbury shall provide a copy of the current recycling profile to the Commissioner upon request.

## **VI. SEP PAYMENTS AND REIMBURSEMENT OF LITIGATION COSTS**

17. Supplemental Environmental Project payment (SEP): Waterbury shall make SEP payments totaling seven thousand five hundred dollars (\$7,500) to Naugatuck River Revival Group, 132 Radnor Ave., Naugatuck, CT 06770, to be used by such organization on projects relating to the reduction, mitigation, and/or remediation of the effects of stormwater pollution or environmental restoration of or other benefit to the Naugatuck River, Housatonic River and/or Long Island Sound watersheds. The SEP payments shall be made by certified bank check no later than the deadlines set forth directly below:

\$2,500 to be paid by April 1, 2015

\$2,500 to be paid by July 1, 2015

\$2,500 to be paid by October 1, 2015

Waterbury shall notify Plaintiffs in writing concurrently when each SEP payment is made and provide a copy of the check.

18. Waterbury shall pay a sum of fifteen thousand dollars (\$15,000) as full and complete satisfaction of Plaintiffs' claim for attorneys' fees and costs incurred to date in this matter. These litigation costs reimbursement payments shall be made by certified bank check addressed to and made out to Super Law Group, LLC, 131 Varick Street, Suite 1033, New York, New York, 10013, no later than the deadlines set forth directly below:

\$5,000 to be paid by September 1, 2013

\$1,500 to be paid by January 1, 2014

\$2,000 to be paid by April 1, 2014

\$2,500 to be paid by July 1, 2014

\$2,500 to be paid by October 1, 2014

\$1,500 to be paid by January 1, 2015

19. Any SEP payment or litigation costs reimbursement payment required by to this Decree must be received no later than the date specified in this Decree. In the event that any SEP payment or litigation costs reimbursement payment owed by Waterbury under the Decree is not made on or before the due date, Waterbury shall pay a late fee of \$250 (payable to the SEP recipient or Plaintiffs, depending upon whether the missed payment is a SEP payment or a litigation costs payment). In addition, in the case of any payment not made on or before the due date, Plaintiffs may provide Waterbury with written notice that Waterbury is in default of its obligations under the Decree, and, if payment is not made within thirty (30) days of such notice, all of the outstanding obligations under this Decree to make SEP payment(s) and/or payments for Plaintiffs' litigation costs shall be accelerated such that they shall be immediately due and owing notwithstanding any payment schedule set forth in this Decree. In addition to a continued requirement to make the payment, Waterbury shall pay ten (10) percent annual interest, accruing daily, on the unpaid scheduled balance only, but not on the accelerated amount. In the event that Waterbury defaults and Plaintiffs bring an action to collect any unpaid balances and/or accelerated payment obligations and/or interest owed, then Plaintiffs shall recover their reasonable attorneys' fees and other costs and expenses in such enforcement or collection proceeding.

20. Once all SEP and litigation costs obligations have been discharged, Plaintiffs shall provide Waterbury with written confirmation of the same.

## **VII. EFFECT OF DECREE**

21. Upon Court approval and entry of this Consent Decree, Plaintiffs covenant not to sue and release Waterbury (including its representatives, assigns, agents, employees, officers, attorneys and consultants) from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365, for damages, penalties, fines, injunctive relief, or any other claim or relief (i) relating to or resulting from noncompliance with the General Permit at the Facility occurring prior to the Effective Date, and (ii) for any past violations of the Clean Water Act at the Facility alleged, or that



could have been alleged, in the Complaint. This Paragraph does not constitute a waiver or release of any claims relating to the enforcement of this Decree. Plaintiffs do not waive their right to bring a future action for injunctive or declaratory relief, penalties, and attorneys' fees and costs based on stormwater discharges that occur after the expiration of the Term of this Decree. Plaintiffs represent that they are not aware of any other environmental claim against Waterbury and such representation shall continue to the Effective Date.

22. If Waterbury discontinues all operations under SIC code 5015, and is therefore no longer subject to Connecticut's General Permit for the Discharge of Stormwater Associated with Industrial Activity, and can demonstrate that fact with appropriate documentation to Plaintiffs, then Waterbury may discontinue compliance with the sections of this Decree related to stormwater pollution controls, inspections, recordkeeping, monitoring and other non-monitoring obligations. Discontinuance of operations shall not relieve Waterbury of its obligations to make SEP and reimbursement of litigation costs payments pursuant to Section VI of this Decree. Nothing in this paragraph shall relieve Waterbury of any post-operation compliance obligations that may otherwise exist under the General Permit.
23. Waterbury releases and discharges Plaintiffs, their representatives, assigns, agents, employees, officers, attorneys and consultants, including those who have held positions in the past, from any and all claims, liability, demands, penalties, costs, and causes of action of every nature which concern or are connected with this action.
24. Plaintiffs do not by consent to the Decree warrant or aver in any manner that Waterbury's compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of Waterbury to comply with all federal, state, and local laws and regulations governing any activity required by this Decree.
25. Waterbury will notify Plaintiffs prior to transfer of ownership or control of the Facility. Waterbury agrees that as a condition of transfer of ownership or control of the Facility to an entity other than owned by Waterbury or an entity owned by Alex Derise or Chris Derise, the new owner or operator will be informed in writing of this Decree and of its requirements to comply with the General Permit.

#### **VIII. REVIEW AND TERM OF DECREE**

26. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Decree by the United States Department of Justice and EPA. Therefore, upon signing of this Decree by the Parties, Plaintiffs shall lodge this Decree with the Court and serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5. If for any reason the United States should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection to entry of this Decree raised by the United States.

27. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. § 1365(c)(3), the Parties will jointly move the Court for entry of this Decree. This Decree shall take effect on the date it is entered by this Court and shall terminate upon receipt by the SEP recipient of the final SEP payment and final litigation costs payment under Section VI of this Decree. If for any reason the Court should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Decree.

#### **IX. MODIFICATION AND ENFORCEMENT OF DECREE**

28. This Decree may be modified only upon written consent of the Parties and the approval of the Court.
29. To the extent permitted by the Court, the United States District Court for the District of Connecticut shall retain and will have jurisdiction over the Parties to this Decree for the resolution of any disputes that may arise under this Decree. This Court shall also allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree.
30. Plaintiffs will provide Waterbury with three (3) business days written notice prior to initiating any court proceedings to enforce this Decree at the provided in the Notices paragraph below.

#### **X. MISCELLANEOUS PROVISIONS**

31. **Entire Agreement.** This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written, among the Parties.
32. **Notices.** Any notice, demand, copies of documents and other communications required to be made under the provisions of this Decree (collectively, "Notices") by any Party hereto shall be effective only if in writing and (a) personally served, (b) mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (c) sent by a nationally recognized courier service (i.e., Federal Express) for next-day delivery, to be confirmed in writing by such courier. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given (a) when actually received or refused by the party to whom sent if delivered by courier, or (b) if mailed, on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of three (3) business days after the date of mailing, whichever first occurs. Notices for Plaintiffs shall be sent to:

Reed W. Super, Esq.  
Super Law Group, LLC

131 Varick Street, Suite 1033  
New York, New York 10013  
*Attorney for Soundkeeper, CFE and CLF*

Notices sent to the individual listed directly above at the address listed above shall be deemed as notice to Plaintiffs.

Notice for Waterbury shall be sent to:

Alex Derise  
Waterbury Auto Salvage, Inc.  
55 Eagle Street  
Waterbury, CT 06708

with a copy to:

Thomas M. Armstrong, Esq.  
Reid and Riege, PC  
One Financial Plaza  
Hartford, CT 06103

Notices sent to the individuals listed directly above at the address listed above shall be deemed as notice to Waterbury.

Each Party shall promptly notify the other Party of any change in the above-listed contact information by using the procedures set forth on this paragraph.

33. **Authorization.** Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.
34. **Successors and Assigns.** This Decree shall be binding upon and inure to the benefit of the Parties and their respective representatives, heirs, executors, administrators, successors, officers, directors, agents, attorneys, employees and permitted assigns.
35. **Interpretation.** The provisions contained herein shall not be construed in favor of or against any Party because that Party or its counsel drafted this Decree, but shall be construed as if all Parties prepared this Decree, and any rules of construction to the contrary are hereby specifically waived. The terms of this Decree were negotiated at arm's length by the Parties hereto.
36. **Headings.** The section and paragraph headings contained in this Decree are for reference purposes only and shall not affect in any way the meaning or interpretation of this Decree.

37. **Counterparts.** This Decree may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Decree.

38. **Severability.** In the event that any of the provisions of this Decree are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

## **XI. EXHIBITS**

39. The following exhibits are attached to this Decree and made a part hereof:

- a. Exhibit A: List of Modifications that Shall be Reflected in Waterbury's SWPPP
- b. Exhibit B: Waterbury Auto Waste Stream Disposal Flow Chart
- c. Exhibit C: Business Recycling Profile

SOUNDKEEPER, INC.

BY: Jason Harrett DATE: 8/19/13  
TITLE: Program Administrator

CONNECTICUT FUND FOR THE ENVIRONMENT, INC.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

CONSERVATION LAW FOUNDATION, INC.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

WATERBURY AUTO SALVAGE INC.,

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

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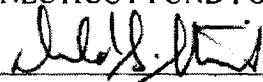
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SOUNDKEEPER, INC.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

CONNECTICUT FUND FOR THE ENVIRONMENT, INC.

BY:  DATE: 8/19/13

TITLE: Exec. Director

CONSERVATION LAW FOUNDATION, INC.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

WATERBURY AUTO SALVAGE INC.,

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

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SOUNDKEEPER, INC.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

CONNECTICUT FUND FOR THE ENVIRONMENT, INC.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

CONSERVATION LAW FOUNDATION, INC.

BY: *[Signature]* DATE: 8/14/13

TITLE: VP, Director

WATERBURY AUTO SALVAGE INC.,

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

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**SOUNDKEEPER, INC.**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**CONNECTICUT FUND FOR THE ENVIRONMENT, INC.**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**CONSERVATION LAW FOUNDATION, INC.**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**WATERBURY AUTO SALVAGE INC.,**

BY: Christopher J. Piro DATE: 2/15/10

TITLE: Piro

ENTERED and DATED this\_\_ day of \_\_\_\_\_, 2013

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Honorable Janet B. Arterton  
United States District Judge



# **EXHIBIT A**

**Modifications that Shall Be Made to Waterbury's SWPPP  
and Control Measures / Best Management Practices (BMPs)**

### **Control Measures**

#### **The following list of Best Management Practices shall be incorporated into the Stormwater Pollution Prevention Plan (SWPPP).**

- a. In order to minimize sediment trackout from the Facility to the street, trucks will remain on the driveway instead of being driven into the Facility, wherever feasible. In addition, Waterbury shall install a rumble strip at the entrance(s) of the Facility and/or periodically sweep concrete entrances to the Facility so as to prevent sediment which may contain pollutants from leaving the Facility on vehicle tires.
- b. Vehicles entering the Facility shall be inspected for leaks upon arrival.
- c. Crusher fluids shall be captured, then held in a labeled container that has secondary containment and is emptied when 75% full to avoid overflow.
- d. The crusher's drain shall be inspected before crushing takes place to ensure that it is clean so that the fluids do not collect and overflow from the crusher onto the ground.
- e. Employee training shall be provided with respect to mercury switches, storage as hazardous (or universal) waste, and should specify a means of safe off-site disposal that is consistent with Waterbury's generator status under RCRA (which Waterbury contends is Conditionally Exempt Small Quantity Generator (CESQG) status).
- f. Paved surfaces shall be cleaned with a vacuum sweeper (or a sweeper with a vacuum attachment) to remove accumulated pollutants at least once per quarter.
- g. Informal inspections shall be conducted of the ground where new vehicles (i.e., inventory vehicles) entering the Facility are to be stored and after a car is moved, in order to collect automobile parts and gather any soils that have become contaminated by leaks or spills.
- h. If parts cleaning is to be performed, Waterbury will be performed with detergent-based or water-based cleaning systems in place of organic solvent degreasers; any solvent use will be minimized; cleaning detergents will be phosphate-free and biodegradable, and cleaning fluids will be recycled and reused (where practical).
- i. Dry cleanup methods shall be employed over use of a hose for the shop floor.
- j. All inspections and cleaning shall be logged where required by the terms of the General Permit for Stormwater.
- k. Waterbury shall designate one or more persons to track parts in the yard and minimize the residence time of hulks by ensuring that they are processed as soon as they have been salvaged to the maximum extent.

1. Fluid-containing parts and engines exposed to the rain will be covered with a hood or other cover material, such as a tarp.

# EXHIBIT B

Waterbury Auto Waste Stream Disposal Flow Chart

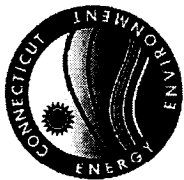
## **Waterbury Auto Waste Stream Disposal**

### **RCRA CESQG**

1. Used Oil (includes compactor liquids) ⇒ burned in on-site furnace or off-site disposal CR02
2. Rags & Absorbents ⇒ off-site disposal - saturated CR02, non-saturated CR05
3. Antifreeze ⇒ off-site disposal CR04
4. Windshield Fluid ⇒ reused or off-site disposal CR04
5. Fuel, Tanks & Filters ⇒ Fuel – reused or off-site disposal CR02, Tanks & Filters – scrap metal CR05
6. Lead-Acid Batteries ⇒ recycled as Universal Waste
7. Mercury Switches ⇒ recycled as Universal Waste
8. Electronic Equipment ⇒ recycled as Universal Waste
9. Mercury Lamps ⇒ Unbroken – recycled as Universal Waste, Broken D009 Hazardous Waste
10. Oil / Water Separators ⇒ not generated
11. Parts Cleaning ⇒ not generated
12. Refrigerants ⇒ reused
13. Tires ⇒ resold or off-site disposal / recycling CR05
14. Lab Pack ⇒ Household hazardous waste CR04 or CR05
15. Scrap Metal ⇒ sold as scrap metal CR05
16. Air Bags ⇒ resold as usable product

# **EXHIBIT C**

Business Recycling Profile



Connecticut Department of  
Energy & Environmental Protection

# Business Recycling Profile

In Connecticut, recycling is mandatory. Connecticut General Statutes and the Regulations of Connecticut State Agencies require designated items to be recycled by **everyone**. Every resident, business, government facility, school, college, hospital, institution, etc. is required *by law* to recycle glass & metal food and beverage containers, plastic containers #1 and #2\*, cardboard\*, corrugated cardboard, magazines\*, newspaper, white office paper, colored office paper\*, scrap metal, Ni-Cd rechargeable batteries, used crankcase oil, lead acid batteries, leaves and grass clippings.

Recycling these items is a critical action we can all take to move the State towards achieving our recycling rate of 58% by 2024 as stated in the amended December 2006 CT State Solid Waste Management Plan. Complying with the state recycling laws has tremendous environmental benefits such as conserving natural resources, reducing pollutants emitted to our air and water; conserving energy, reducing greenhouse gas emissions, and eliminating the need for new solid waste disposal facilities.

This form is a guidance document to help businesses better manage their recycling program and increase recovery efforts. This form does not need to be submitted to the Connecticut Department of Energy and Environmental Protection (DEEP) unless it is requested, in response to an inspection and/or an enforcement action. For more recycling resources please visit our [Business Recycling Resources webpage](#).

## Part I: Company Information

1. Company Name:

Mailing Address:

2. Recycling Contact:

Phone(s):

3. Additional Contact:

Phone(s):

City/Town:

State:

Zip Code:

Title:

Email:

Title:

Email:

## Part II: Facility/Operations

1. Type of business:

2. Number of buildings:

3. Total square footage of building(s)

4. Acreage of lawn area::

5. Number of employees:

\*Materials will be designated recyclables in 2012.

## Part II: Facility/Operations (continued)

6. Current solid waste/recycling hauler(s):

Name:

Phone:

Name:

Phone:

Name:

Phone:

☐ Check here if additional sheets are necessary, and label and attach them to this sheet.

7. Building Owner:

Mailing Address:

City/Town:

State:

Zip Code:

Phone:

Email:

### All Businesses Are Required to Recycle:

- **High Grade White Office Paper:** White copy paper, computer paper, office stationery, memo paper, etc.
- **High Grade Colored Office Paper\*:** Colored ledger or copy paper
- **Old Corrugated Cardboard:** Old or discarded corrugated boxes – *Not waxed*
- **Boxboard\*:** Including cereal boxes, tissue boxes, or chip board
- **Old Newspaper:** Used or discarded newspapers
- **Magazines\***
- **Plastic containers #1 (PET) and #2 (HDPE)\*:** Bottles and containers
- **Glass & Metal Food and Beverage Containers** (including 5¢ deposit containers)

- **Leaves:** Foliage which has fallen from trees must be recycled
- **Grass Clippings:** Best practice is to recycle grass by leaving grass clippings on the lawn.
- **Used Crankcase Oil:** Used crankcase oil from internal combustion engines
- **Lead Acid Storage Batteries:** Used batteries from cars, airplanes, boats, tractors, etc.
- **Scrap Metal:** Used or discarded items which consist predominantly of metals such as iron, aluminum, brass, copper, lead, chromium, tin, nickel, etc. or alloys of these metals, including but not limited to appliances.
- **Rechargeable Batteries:** Nickel-cadmium (NiCd) rechargeable batteries, both those contained within appliances and those sold individually are required to be recycled after they no longer are usable.

In addition to the state mandated recyclables listed above, check your local ordinances to learn about additional materials your business may be required to recycle.  
**58% by 2024**

\*Materials will be designated recyclables in 2012.



### Part III: Company's Current Recycling & Recovery Efforts

Please use the table below to describe your company's current recycling program. Attachments of photos or other documents are also accepted if you are requested to submit this form.

RECYCLABLE MATERIAL	AVG WEIGHT (indicate tons or pounds) COLLECTED FOR RECYCLING EACH MONTH (If you do not have weight data enter the number and size of containers and collection frequency)	HOW & WHERE MATERIAL IS COLLECTED	WHO PICKS-UP MATERIAL AND WHERE IS THE MATERIAL TAKEN FOR RECYCLING
<b>EXAMPLE:</b> OFFICE PAPER (White and other paper combined)	One 40-gallon wheeled cart/week	Everyone collects at their desk; brought to central location (large wheeled cart near elevators). Janitor brings to loading dock when it is full (about once a week)	Our current trash hauler, (NAME) empties our paper recycling wheeled cart 2x/month (we call them as-needed) and material is taken to a permitted recycling facility (PERMITTEE NAME) in (TOWN).
Office paper (white paper)**			
Office paper (colored paper)**			
Newspaper**			
Other paper or mixed paper (please list types here)			

\*\* Mandatory item that everyone is required to recycle in Connecticut.

**Part III: Company's Current Recycling & Recovery Efforts (continued)**

RECYCLABLE MATERIAL	AVG WEIGHT (indicate tons or pounds) COLLECTED FOR RECYCLING EACH MONTH (if you don't have weight data enter the number and size of containers and collection frequency)	HOW & WHERE MATERIAL IS COLLECTED	WHO PICKS-UP MATERIAL AND WHERE IS THE MATERIAL TAKEN FOR RECYCLING
EXAMPLE: Old Corrugated Cardboard	We have a 4-yard dumpster behind our main warehouse. It's picked up twice a week.	Warehouse staff collect and flatten boxes as we go along. A small pile is created during a shift (we have 3 shifts/day). At the end of the shift an employee removes the small pile and brings to dumpster outside.	Our current trash hauler, (NAME) empties cardboard dumpster on Mondays and brings it to a properly permitted facility (PERMITTEE NAME) in (TOWN) for recycling.
Corrugated cardboard**			
Boxboard**			
Magazines**			
Food and beverage containers (check all those collected for recycling) <input type="checkbox"/> Glass** <input type="checkbox"/> Metal** <input type="checkbox"/> Plastic 1&2** <input type="checkbox"/> Paper carton or (juice-type) box			
Other			

\*\* Mandatory item that everyone is required to recycle in Connecticut

**Part III: Company's Current Recycling & Recovery Efforts (continued)**

<b>RECYCLABLE MATERIAL</b>	<b>AVG WEIGHT (indicate tons or pounds) COLLECTED FOR RECYCLING EACH MONTH (if you don't have weight data enter the number and size of containers and collection frequency)</b>	<b>HOW &amp; WHERE MATERIAL IS COLLECTED</b>	<b>WHO PICKS-UP MATERIAL AND WHERE IS THE MATERIAL TAKEN FOR RECYCLING</b>
<b>EXAMPLE:</b> <i>Printer Toner cartridges</i>	<i>We have 8 printers in our offices and generally replace/recycle 1/month</i>	<i>Office manager returns all toner cartridges to Office Supply Store for a credit towards future office supplies</i>	<i>Use mailer envelopes that come with new toner. We mail them back to Office supply store (or they pick up with new deliveries).</i>
<b>Lead Acid Storage Batteries (car, truck, boat)**</b>			
<b>Rechargeable Batteries**</b>			
<b>Used Crankcase Oil**</b>			
<b>Scrap Metal**</b>			

\*\* Mandatory item that everyone is required to recycle in Connecticut

Part III: Company's Current Recycling & Recovery Efforts (continued)

MATERIAL	AVG WEIGHT (indicate tons or pounds) COLLECTED FOR RECYCLING EACH MONTH (if you don't have weight data enter the number and size of containers and collection frequency)	HOW & WHERE MATERIAL IS COLLECTED	WHO PICKS-UP MATERIAL AND WHERE IS THE MATERIAL TAKEN FOR RECYCLING
EXAMPLE: Leaves and other yard debris	N/A	Our landscape company (NAME, TOWN) mows our lawns and maintains our entry garden. They remove all the materials (although grass clippings are left on the lawn).	Our landscape company (NAME) takes them away to a properly permitted recycling facility, (PERMITTEE NAME, LOCATION).
Leaves**			
Grass clippings**			
Brush, stumps and other yard debris			
Food waste			
Other			
Other			

\*\* Mandatory item that everyone is required to recycle in Connecticut

# Part IV: Company's Current Waste Reduction, Reuse And Other Recovery Programs

WASTE REDUCTION, REUSE AND OTHER RECOVERY PROGRAMS	PROJECT DESCRIPTION
EXAMPLE: Waste Reduction	Our cafeteria recently began using reusable trays and washing them instead of using Styrofoam trays which we were throwing away. We have also instituted a reusable mug program (providing a free mug to employees) to try and reduce the amount of coffee cup waste.
Waste Reduction	
Waste Reduction	
Other	
EXAMPLE: ReUse	Our company generates approximately 10 used Gaylord containers /week that we donate to Foodshare for their produce distribution program. We also donate over-stock and discontinued building supplies to the ReCONSTRUCTION Center in New Britain.
ReUse	
ReUse	
Other	
Other	

## Part V: Recycling & Recovery Programs Planned

Please use the table below to describe future recycling efforts and how compliance with the mandatory items, if not already recovered for recycling, will be achieved.

IDEA / MATERIAL	ESTIMATED GENERATION RATE	HOW AND WHERE WILL THE MATERIAL BE COLLECTED?	WHO WILL PICK-UP THIS MATERIAL? FINAL/END MARKET?	WHEN WILL PROGRAM BE IMPLEMENTED?
EXAMPLE: Food and Beverage containers (glass, metal and plastic)	25 gallons/month	Will place barrel in break room; janitorial staff will empty and remove materials to a larger container on our loading dock.	There are a lot of 5¢ deposit containers. We're looking into having a local non-profit organization collect them for free and redeem the deposits.	We will start this program by August 8, 2008 (2 weeks from now).
EXAMPLE: 55 gallon drums	10/week	We generate 55 gallon drums, which contained non-hazardous substances. We stockpile them outside the plant until we have 50 drums.	Working with XYZ, a company that reconditions the drums. We've found this to be more cost effective than recycling them at this time.	We've already started collecting and expect our first pick up to be next week (June 5, 2008)

**Part V: Recycling & Recovery Programs Planned (continued)**

IDEA / MATERIAL	ESTIMATED GENERATION RATE	HOW AND WHERE WILL THE MATERIAL BE COLLECTED?	WHO WILL PICK-UP THIS MATERIAL? FINAL/END MARKET?	WHEN WILL PROGRAM BE IMPLEMENTED?
EXAMPLE: 5 gallon buckets	15-30 <u>buckets/month</u>	We generate buckets (contained non-hazardous substances) and cannot use them. Will rinse and stack (with lids) off to side of loading dock.	We're trying to secure a connection with a local reuse center or distribute via materials exchange program.	We hope to start this program by the end of August 2008.

**Reminder: This form is only required to be submitted when requested by DEEP.**

**When requested by DEEP**, please include photos of your recycling bins and containers and any copies of recycling/waste contract. If you have additional pages or items to help explain/show successes in your waste recycling/recovery efforts, please attach those as well including brochures, flyers, employee educational materials, etc.

**When requested by DEEP**, please submit the completed form and all Supporting Documents to:

DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION  
BUREAU OF MATERIALS MANAGEMENT & COMPLIANCE ASSURANCE  
WASTE ENGINEERING AND ENFORCEMENT DIVISION  
79 ELM STREET, 4<sup>TH</sup> FLOOR  
HARTFORD, CT 06106-5127

PHONE: (860) 424-3365





# Naugatuck River Revival Group



132 Radnor Avenue  
Naugatuck, CT 06770  
(203)721-0926

See Naugatuck River Revival Group on Facebook

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 4390  
Ben Franklin Station  
Washington, D.C. 20044-4390

August 16, 2013

Re: Proposed Consent Decree – Soundkeeper, et al. v. Waterbury Auto Salvage, Inc.,  
(Case No. 3: 12-cv-00842-JBA)

Dear Citizen Suit Coordinator,

The Naugatuck River Revival Group, Inc (NRRG), a 501(c)(3) nonprofit organization (ID # 35-2334025), has received and reviewed the proposed consent decree which names the NRRG as the recipient of \$7,500 in payment for a Supplemental Environmental Project (SEP) for use by the NRRG “on projects relating to the reduction, mitigation, and/or remediation of the effects of stormwater pollution or environmental restoration of or other benefit to the Naugatuck River, Housatonic River and /or Long Island Sound watersheds.”

The NRRG’s mission is to clean, protect and preserve the Naugatuck River and its tributaries through cooperative and educational activities that promote regional awareness, stewardship and enjoyment of the Naugatuck River and its watershed. The Naugatuck River runs approximately 44 miles through 11 towns and cities and is home to over a quarter of a million residents. We actively clean debris from the Naugatuck River and thoroughly document the status of the River, including the River’s wildlife, recreational uses and impairments, all of which raises public awareness and encourages our mission.

All funds received by NRRG as a result of this consent decree will be used solely for the purposes outlined in the proposed consent decree. No portion of those funds will be used for lobbying purposes, nor will any portion be used by Soundkeeper, the Conservation Law Foundation, or Connecticut Fund for the Environment.

Thank you for your consideration. Please contact me if you require any additional information.

Kevin R. Zak  
President  
Naugatuck River Revival Group  
203.530.7850

cc/sh



7:17 AM (8/21/13)

Reed Super <reed@superlawgroup.com>

to Dean, Oswald, Nisha, Mohamed, Thomas, Roger, Alexandra, Zak, Lauren, robert.isner,

Dear Dean,

Attached for your information is a final, signed consent decree in *Soundkeeper, Inc. et al., v. Waterbury Auto Salvage, Inc.*, No. 3:12-cv-00842-JBA, which is being provided to the Department of Justice and EPA for the 45-day review period under 33 U.S.C. § 1365(c)(3) and 40 C.F.R. § 135.5.

Thank you for the below comments on an earlier version of the consent decree. I have also attached a document showing the changes that were made to Paragraphs 22 and 16 as a result of those comments. The defendant, Waterbury Auto Salvage, was unwilling to agree to further changes to Section V of the decree, relating to hazardous waste, solid waste and recycling in the context of a negotiated settlement of this Clean Water Act case.

At your request, the below comments are being provided to DOJ and EPA, along with this response and an August 16, 2013, letter from Waterbury's counsel, Thomas Armstrong (also attached).

Thank you again for your input on the decree.

Regards,

Reed

-----  
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firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

On Wed, Aug 7, 2013 at 12:41 PM, Applefield, Dean <[Dean.Applefield@ct.gov](mailto:Dean.Applefield@ct.gov)> wrote:

Reed/Tom – Following up on Reed's 7/31 e-mail, I am writing to provide some feedback regarding the proposed Consent Decree with Waterbury Auto Salvage.

As you probably suspect, for the reason discussed below, the Department cannot lend its support to the proposed Consent Decree.

While recognizing that the initial impetus for this matter was an alleged Clean Water Act violation, from the Department's perspective, this an opportunity for truing up environmental compliance not only for management of stormwater. In the Department's experience compliance with waste management requirements has presented challenges for this sector. To assist with compliance, DEEP has requested the inclusion of self-implementing provisions - not involving the Department – regarding waste management in the proposed Consent Decree.

The Department recommending using a reference, a comprehensive checklist that a consultant could use to determine the waste management practices tailored to any particular site. It identified certain wastes and the management practices associated with those wastes.

Some time ago, I was asked to review a replacement for this comprehensive checklist. In its stead was a half page list of wastes with an arrow identifying a disposal method for the waste. The half page list entitled "waste disposal plan" provided no instruction on how to manage any waste prior to disposal. Even with respect to disposal, the half page document was not particularly instructive on whether the disposal method identified by arrow was exclusive, preferred, or required or whether additional related requirements, such as the use a manifest, was required. I provided feedback noting that the proposal was grossly deficient.

When discussing the use of the comprehensive checklist provided by the Department – which frankly we think is a useful management tool – it was mentioned that the checklist made reference to another guidance document and that the references to this other guidance document were problematic. These references did not impose any requirements and were intended as further reference. Nevertheless, since they were viewed as an impediment, the Department expressed its willingness, and remains willing, to eliminate the references deemed problematic. Another approach was mentioned in which Waterbury Auto Salvage would prepare a waste management checklist, to provide assistance regarding the management of waste generated at the facility, to be reviewed by DEEP before being used at Waterbury Salvage's facility. No such checklist was created or provided to DEEP.

Instead, the proposed Consent Decree appended to the Soundkeeper's July 31<sup>st</sup> e-mail contains the exact same grossly deficient so-called "waste disposal plan" previously provided to DEEP. DEEP has *already indicated* that this half page document serves little waste management purpose and does not meet either the spirit or intent of what DEEP had proposed. It makes no mention of nor provides any assistance regarding management of wastes at the facility and is not a "plan" in any meaningful sense of that word.

I would also note that a sentence in paragraph 16b states that Waterbury has provided a copy of the "current waste disposal plan" to the Commissioner. The relevant portion of DEEP, the Waste Engineering and Enforcement Division, has no record of receiving such a "plan". Moreover, echoing my comment above, another sentence in paragraph 16b states that the "waste disposal plan incorporates the applicable best management practices for waste management into the operations of the facility." This is simply wrong. In fact, the waste disposal plan makes no mention of *any* best management practice. These inaccuracies should be corrected.

Paragraphs 16 b and c require retention of certain records for three years after the Effective Date of the Consent Decree. Yet, paragraph 3 of the Proposed Consent Decree has the Decree ending upon receipt of the final Supplemental Environmental Project payment, or on October 15, 2015, clearly this would be before the expiration of the three year period under paragraph 16 b and c. I would recommend revising the Decree so that the record retention provision in paragraph 16 remains in effect for three years.

The Department also questions the revision to introductory language in paragraph 16 about the Waterbury Auto Salvage maintaining compliance with the state's waste and recycling requirements. These, of course, are already existing requirements and the provisions proposed by the Department included a method for trying to maintain that compliance. The introductory language as revised eliminated the language about maintaining compliance and now has a sentence about paragraph 16 being included at DEEP's request, which is fine. However, the next sentence now states that Waterbury will follow the hazardous waste *handling* procedures described in section 16, but as mentioned above section 16 fails to describe any waste handling procedures. Moreover, paragraph 16 c concerns recycling of materials that may not be hazardous wastes. It is hard to make sense of this introductory sentence requiring that Waterbury Auto follow "hazardous waste handling procedures" described in paragraph 16 and then have paragraph 16 include material that may not be hazardous wastes. In short, with the proposed revisions to the introductory language I am not sure I can understand the meaning of paragraph 16. We would recommend returning to the language the Department initially recommended or at a minimum revising the language of the current proposal to eliminate the confusion discussed in this paragraph.

In paragraph 22, there is a provision that addresses the possibility of Waterbury Auto Salvage discontinuing operations. In that event, Waterbury does not need to comply with most, if not all provisions of the Consent Decree except for payment obligations. I have not independently researched the question, but Waterbury Salvage may well have post-operation compliance obligations including, but not limited to, requirements under GP for the Discharge of Stormwater associated with Industrial Activity. While the Department does not understand why such


requirements would not be included in this Consent Decree, if the parties expressly exclude such requirements, for purposes of clarity Waterbury Auto Salvage's need to comply with such requirements should at least be acknowledged.


I thank you for the opportunity to review the proposed Consent Decree. It is unfortunate that the Department opposes, rather than lending its support to its entry. I would appreciate if you could include these comments in the record for this action and pass them along to both EPA and the U.S. Department of Justice so these offices can consider these comments when considering the proposed Consent Decree.


Dean

Dean Applefield, Esq.  
Office of Legal Counsel  
Department of Energy and Environmental Protection  
79 Elm Street  
Hartford, Connecticut 06106  
Tel: (860) 424-3048  
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**3 attachments** — [Download all attachments](#)

 **13-0820 - [Proposed] Consent Decree - Waterbury - FULLY EXECUTED.pdf**  
966K [View](#) [Download](#)

 **paragraphs 16 and 22 revisions.pdf**  
64K [View](#) [Download](#)

 **2291\_001.pdf**  
126K [View](#) [Download](#)

## V. HAZARDOUS WASTE, SOLID WASTE AND RECYCLING PROGRAM

16. This Paragraph 16 of the Decree is included at the request of DEEP, a non-party to this action. Waterbury shall undertake and maintain throughout the Term of this Decree all ~~hazardous waste handling~~ procedures described below:

- a. Waterbury has retained a qualified consultant to prepare the documents and implement or oversee the actions required by this Paragraph 16. The consultant has at least five years of substantial work experience in the environmental compliance field, including experience with the Connecticut hazardous and solid waste management regulations. Waterbury has submitted or will submit, upon request, to the DEEP Commissioner a description of a consultant's education, experience and training that is relevant to the work required by this Paragraph 16.
- b. Waterbury's consultant has prepared the waste stream disposal ~~plan-flow chart ("WSD Plan")~~ attached hereto as Exhibit B to this Consent Decree based, in part, on DEEP's Waste Management Checklist for Auto Recycling Facilities (dated 4/30/10, revised 11/15/2012). Waterbury has provided a copy of the ~~current WSD Plan~~ Exhibit B to the DEEP Commissioner. ~~The WSD Plan incorporates the applicable best management practices for waste management into the operations of the facility.~~ Waterbury shall update the ~~WSD Plan~~ flow chart and its any associated best management practices if any of the waste generation practices at the facility materially change. To the extent required by law, Waterbury shall maintain a copy of the current flow chart and any related records at the facility at all times for a period of at least three (3) years from the Effective Date notwithstanding the termination of this Decree.
- c. Waterbury's consultant has also conducted a comprehensive recycling review of the facility to evaluate compliance with the Connecticut recycling laws set forth in CGS Section 22a-241b(d). Prior to the Effective Date, Waterbury's consultant shall prepare a business recycling profile documenting the management of materials generated at the facility. An example of a recycling profile is attached as Exhibit C to this Decree. Waterbury shall update the business recycling profile if there is a change in the type of recyclables handled at the facility. Waterbury shall incorporate compliant recycling practices into daily operations at the facility, including but not limited to ensuring that contracts are in place for collection of all solid waste and recyclables at the facility. To the extent required by law, Waterbury shall maintain a copy of the current business recycling profile and any related records at the facility at all times for a period of at least three (3) years from the Effective Date notwithstanding the termination of this Decree. Waterbury shall provide a copy of the current recycling profile to the Commissioner upon request.

22. If Waterbury discontinues all operations under SIC code 5015, and is therefore no longer subject to Connecticut's General Permit for the Discharge of Stormwater Associated with Industrial Activity, and can demonstrate that fact with appropriate documentation to Plaintiffs, then Waterbury may discontinue compliance with the sections of this Decree related to stormwater pollution controls, inspections, recordkeeping, monitoring and other non-monitoring obligations. Discontinuance of operations shall not relieve Waterbury of its obligations to make SEP payments and reimbursement of litigation costs ~~reimbursement payments pursuant to Section VI of this Decree.~~ Nothing in this paragraph shall relieve Waterbury of any post-operation compliance obligations that may otherwise exist under the General Permit.





REID AND RIEGE, P.C.

COUNSELLORS AT LAW

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August 16, 2013

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, D.C. 20044-7415

Re: Soundkeeper, Inc., et al. vs. Waterbury Auto Salvage Inc. in U.S. District Court,  
District of Connecticut, Case No. 3:12-cv-00842-JBA

Dear Citizen Suit Coordinator:

As a professional courtesy, the Connecticut Department of Energy & Environmental Protection ("DEEP") requested a copy of the proposed Consent Decree in the above referenced matter. The DEEP has not appeared in the Action.

After consultation with Reed Super, the attorney for the Plaintiffs, it was mutually agreed to incorporate the DEEP's comments to the extent they related to the Clean Water Act. However, I declined to accept any further changes to the hazardous waste and recycling provisions suggested by DEEP, stating to Attorney Super that this was a fragile settlement and to add additional obligations which were wholly unrelated to storm water issues might jeopardize the settlement. Furthermore, the Complaint did not assert a violation of hazardous waste laws or regulations.

Attorney Super and I have mutually agreed to provide you with a copy of DEEP's Consent Decree response, together with a copy of this letter. We have also mutually agreed not to make any additional hazardous waste or recycling changes to the Decree. My client is aware of its obligations pertaining to hazardous waste and its auto parts business recycles almost everything.

Accordingly, I encourage DOJ to approve the proposed Consent Decree as negotiated. Thank you.

Very truly yours,

Thomas M. Armstrong

